



House of Representatives

General Assembly

File No. 253

January Session, 2001

Substitute House Bill No. 5585

House of Representatives, April 11, 2001

The Committee on General Law reported through REP. FOX of the 144th Dist., Chairperson of the Committee on the part of the House, that the substitute bill ought to pass.

AN ACT AUTHORIZING THE USE OF TRANSACTION SCAN DEVICES BY SELLERS OF ALCOHOLIC LIQUOR AND TOBACCO.

Be it enacted by the Senate and House of Representatives in General Assembly convened:

1 Section 1. Section 30-86 of the general statutes is repealed and the
2 following is substituted in lieu thereof:

3 (a) As used in this section:

4 (1) "Cardholder" means any person who presents a driver's license
5 or an identity card to a permittee or permittee's agent or employee, to
6 purchase or receive alcoholic liquor from such permittee or permittee's
7 agent or employee;

8 (2) "Identity card" means an identification card issued in accordance
9 with the provisions of section 1-1h;

10 (3) "Transaction scan" means the process by which a permittee or
11 permittee's agent or employee checks, by means of a transaction scan

12 device, the validity of a driver's license or an identity card; and

13 (4) "Transaction scan device" means any commercial device or
14 combination of devices used at a point of sale that is capable of
15 deciphering in an electronically readable format the information
16 encoded on the magnetic strip or bar code of a driver's license or an
17 identity card.

18 (b) Any permittee or any servant or agent of a permittee who sells
19 or delivers alcoholic liquor to any minor, or to any intoxicated person,
20 or to any habitual drunkard, knowing the person to be such an
21 habitual drunkard, shall be subject to the penalties of section 30-113.
22 Any person who sells, ships, delivers or gives any such liquors to such
23 minor, by any means, including, but not limited to, the Internet or any
24 other on-line computer network, except on the order of a practicing
25 physician, shall be fined not more than one thousand five hundred
26 dollars or imprisoned not more than eighteen months, or both. The
27 provisions of this section shall not apply (1) to a sale, shipment or
28 delivery made to a person over age eighteen who is an employee or
29 permit holder under section 30-90a and where such sale, shipment or
30 delivery is made in the course of such person's employment or
31 business, (2) to a sale, shipment or delivery made in good faith to a
32 minor who practices any deceit in the procurement of an identity card
33 issued in accordance with the provisions of section 1-1h, who uses or
34 exhibits any such identity card belonging to any other person or who
35 uses or exhibits any such identity card that has been altered or
36 tampered with in any way, or (3) to a shipment or delivery made to a
37 minor by a parent, guardian or spouse of the minor, provided such
38 parent, guardian or spouse has attained the age of twenty-one and
39 provided such minor possesses such alcoholic liquor while
40 accompanied by such parent, guardian or spouse.

41 (c) (1) A permittee or permittee's agent or employee may perform a
42 transaction scan to check the validity of a driver's license or identity

43 card presented by a cardholder as a condition for selling, giving away
44 or otherwise distributing alcoholic liquor to the cardholder.

45 (2) If the information deciphered by the transaction scan performed
46 under subdivision (1) of this subsection fails to match the information
47 printed on the driver's license or identity card presented by the
48 cardholder, or if the transaction scan indicates that the information so
49 printed is false or fraudulent, neither the permittee nor any permittee's
50 agent or employee shall sell, give away or otherwise distribute any
51 alcoholic liquor to the cardholder.

52 (3) Subdivision (1) of this subsection does not preclude a permittee
53 or permittee's agent or employee from using a transaction scan device
54 to check the validity of a document presented as identification other
55 than a driver's license or an identity card, if the document includes a
56 bar code or magnetic strip that may be scanned by the device, as a
57 condition for selling, giving away or otherwise distributing alcoholic
58 liquor to the person presenting the document.

59 (d) (1) No permittee or permittee's agent or employee shall
60 electronically or mechanically record or maintain any information
61 derived from a transaction scan, except the following: (A) The name
62 and date of birth of the person listed on the driver's license or identity
63 card presented by a cardholder; (B) the expiration date and
64 identification number of the driver's license or identity card presented
65 by a cardholder.

66 (2) No permittee or permittee's agent or employee shall use a
67 transaction scan device for a purpose other than the purposes specified
68 in subsection (c) of this section or subsection (d) of section 53-344, as
69 amended by this act.

70 (3) No permittee or permittee's agent or employee shall sell or
71 otherwise disseminate the information derived from a transaction scan
72 to any third party for any purpose, including, but not limited to, any

73 marketing, advertising or promotional activities, except that a
74 permittee or permittee's agent or employee may release that
75 information pursuant to a court order.

76 (4) Nothing in subsection (c) of this section or this subsection
77 relieves a permittee or permittee's agent or employee of any
78 responsibility to comply with any other applicable state or federal laws
79 or rules governing the sale, giving away or other distribution of
80 alcoholic liquor.

81 (5) Any person who violates this subsection shall be subject to a civil
82 penalty of not more than one thousand dollars.

83 (e) (1) Except as provided in subdivision (2) of this subsection, a
84 permittee or permittee's agent or employee may not be found guilty of
85 selling alcoholic liquor to a minor under subsection (b) of this section if
86 the permittee or permittee's agent or employee raises and proves as an
87 affirmative defense that all of the following occurred: (A) A cardholder
88 attempting to purchase or receive alcoholic liquor presented a driver's
89 license or an identity card; (B) a transaction scan of the driver's license
90 or identity card that the cardholder presented indicated that the license
91 or card was valid; and (C) the alcoholic liquor was sold, given away or
92 otherwise distributed to the cardholder in reasonable reliance upon the
93 identification presented and the completed transaction scan.

94 (2) In determining whether a permittee or permittee's agent or
95 employee has proven the affirmative defense provided by subdivision
96 (1) of this subsection, the trier of fact in the action for the alleged
97 violation of subsection (b) of this section shall consider that reasonable
98 reliance upon the identification presented and the completed
99 transaction scan may require a permittee or permittee's agent or
100 employee to exercise reasonable diligence and that the use of a
101 transaction scan device does not excuse a permittee or permittee's
102 agent or employee from exercising such reasonable diligence to
103 determine the following: (A) Whether a person to whom the permittee

104 or permittee's agent or employee sells, gives away or otherwise
105 distributes alcoholic liquor is twenty-one years of age or older; and (B)
106 whether the description and picture appearing on the driver's license
107 or identity card presented by a cardholder is that of the cardholder.

108 Sec. 2. Section 53-344 of the general statutes is repealed and the
109 following is substituted in lieu thereof:

110 (a) As used in this section:

111 (1) "Cardholder" means any person who presents a driver's license
112 or an identity card to a seller or seller's agent or employee, to purchase
113 or receive tobacco from such seller or seller's agent or employee;

114 (2) "Identity card" means an identification card issued in accordance
115 with the provisions of section 1-1h;

116 (3) "Transaction scan" means the process by which a seller or seller's
117 agent or employee checks, by means of a transaction scan device, the
118 validity of a driver's license or an identity card; and

119 (4) "Transaction scan device" means any commercial device or
120 combination of devices used at a point of sale that is capable of
121 deciphering in an electronically readable format the information
122 encoded on the magnetic strip or bar code of a driver's license or an
123 identity card.

124 [(a)] (b) Any person who sells, gives or delivers to any minor under
125 eighteen years of age tobacco, unless the minor is delivering or
126 accepting delivery in [his] such person's capacity as an employee, in
127 any form shall be fined not more than two hundred dollars for the first
128 offense, not more than three hundred fifty dollars for a second offense
129 within an eighteen-month period and not more than five hundred
130 dollars for each subsequent offense within an eighteen-month period.

131 [(b)] (c) Any person under eighteen years of age who purchases or

132 misrepresents [his] such person's age to purchase tobacco in any form
133 shall be fined not more than fifty dollars for the first offense and not
134 less than fifty dollars nor more than one hundred dollars for each
135 subsequent offense.

136 (d) (1) A seller or seller's agent or employee may perform a
137 transaction scan to check the validity of a driver's license or identity
138 card presented by a cardholder as a condition for selling, giving away
139 or otherwise distributing tobacco to the cardholder.

140 (2) If the information deciphered by the transaction scan performed
141 under subdivision (1) of this subsection fails to match the information
142 printed on the driver's license or identity card presented by the
143 cardholder, or if the transaction scan indicates that the information so
144 printed is false or fraudulent, neither the seller nor any seller's agent or
145 employee shall sell, give away or otherwise distribute any tobacco to
146 the cardholder.

147 (3) Subdivision (1) of this subsection does not preclude a seller or
148 seller's agent or employee from using a transaction scan device to
149 check the validity of a document other than a driver's license or an
150 identity card, if the document includes a bar code or magnetic strip
151 that may be scanned by the device, as a condition for selling, giving
152 away or otherwise distributing tobacco to the person presenting the
153 document.

154 (e) (1) No seller or seller's agent or employee shall electronically or
155 mechanically record or maintain any information derived from a
156 transaction scan, except the following: (A) The name and date of birth
157 of the person listed on the driver's license or identity card presented by
158 a cardholder; (B) the expiration date and identification number of the
159 driver's license or identity card presented by a cardholder.

160 (2) No seller or seller's agent or employee shall use a transaction
161 scan device for a purpose other than the purposes specified in

162 subsection (d) of this section or subsection (c) of section 30-86, as
163 amended by this act.

164 (3) No seller or seller's agent or employee shall sell or otherwise
165 disseminate the information derived from a transaction scan to any
166 third party, including, but not limited to, selling or otherwise
167 disseminating that information for any marketing, advertising or
168 promotional activities, but a seller or seller's agent or employee may
169 release that information pursuant to a court order.

170 (4) Nothing in subsection (d) of this section or this subsection
171 relieves a seller or seller's agent or employee of any responsibility to
172 comply with any other applicable state or federal laws or rules
173 governing the sale, giving away or other distribution of tobacco.

174 (5) Any person who violates this subsection shall be subject to a civil
175 penalty of not more than one thousand dollars.

176 (f) (1) Except as provided in subdivision (2) of this subsection, a
177 seller or seller's agent or employee may not be found guilty of a charge
178 of a violation of subsection (b) of this section if the seller or seller's
179 agent or employee raises and proves as an affirmative defense that all
180 of the following occurred: (A) A cardholder attempting to purchase or
181 receive tobacco presented a driver's license or an identity card; (B) a
182 transaction scan of the driver's license or identity card that the
183 cardholder presented indicated that the license or card was valid; and
184 (C) the tobacco was sold, given away or otherwise distributed to the
185 cardholder in reasonable reliance upon the identification presented
186 and the completed transaction scan.

187 (2) In determining whether a seller or seller's agent or employee has
188 proven the affirmative defense provided by subdivision (1) of this
189 section, the trier of fact in the action for the alleged violation of
190 subsection (b) of this section shall consider that reasonable reliance
191 upon the identification presented and the completed transaction scan

192 may require a seller or seller's agent or employee to exercise
193 reasonable diligence and that the use of a transaction scan device does
194 not excuse a seller or seller's agent or employee from exercising such
195 reasonable diligence to determine the following: (A) Whether a person
196 to whom the seller or seller's agent or employee sells, gives away or
197 otherwise distributes tobacco is eighteen years of age or older; and (B)
198 whether the description and picture appearing on the driver's license
199 or identity card presented by a cardholder is that of the cardholder.

Statement of Legislative Commissioners:

Throughout section 1, "permittee, permittee's agent or employee of a permittee" was changed to "permittee or permittee's agent or employee" for conciseness. Throughout section 2, "seller, seller's agent or employee of a seller" was changed to "seller or seller's agent or employee" for conciseness. In sections 1(a) and 2(a), "government issued" was removed to avoid redundancy. In section 1(a), "that is presented as a condition for purchasing or receiving alcoholic liquor" was removed to avoid redundancy with language in section 1(c)(1). In section 2(a), "that is presented as a condition for purchasing or receiving tobacco" was removed to avoid redundancy with language in section 1(d)(1). Internal references were added to section 1(d)(2) and (e)(1) and section 2(e)(2) and (f)(1).

GL **JOINT FAVORABLE SUBST.**

The following fiscal impact statement and bill analysis are prepared for the benefit of members of the General Assembly, solely for the purpose of information, summarization, and explanation, and do not represent the intent of the General Assembly or either House thereof for any purpose:

OFA Fiscal Note

State Impact: Potential Minimal Revenue Gain

Affected Agencies: None

Municipal Impact: None

Explanation**State Impact:**

The bill permits alcohol and tobacco retailers to use a transaction scanning device to verify the age of a customer by reading the magnetic strip or bar code on a driver's license or identity card, which has no fiscal impact on the state. The bill forbids the sale or distribution of information derived from scanning the cards to third parties. The bill subjects violators to a civil penalty of \$1,000. This may result in a minimal revenue gain, the extent of which can not be determined as it is dependent on the number of violations that occur.

OLR Bill Analysis**sHB 5585*****AN ACT AUTHORIZING THE USE OF TRANSACTION SCAN DEVICES BY SELLERS OF ALCOHOLIC LIQUOR AND TOBACCO.*****SUMMARY:**

This bill specifically permits alcohol and tobacco retailers to use a transaction scanning device to verify the age of a customer by reading the magnetic strip or bar code on a driver's license or Department of Motor Vehicle (DMV)-issued identity card. It provides the retailers with an affirmative defense if they sell alcohol or tobacco in reliance on the scan's validity, but prohibits the sale if the information printed on the card is false or fraudulent, or if it does not match the scan results. The bill does not preclude the retailer, as a condition of the sale, from scanning other documents that have a scannable magnetic strip or bar code. But scanning these documents does not constitute an affirmative defense.

The bill restricts how the retailers can use the scan device, restricts the information they can record, and forbids selling or distributing information derived from the scan to third parties. It also specifies that merchants must still comply with other applicable state and federal alcohol and tobacco laws. Violators can be subject to a civil fine of up to \$1,000.

EFFECTIVE DATE: October 1, 2001

TRANSACTION SCAN DEVICE

Under the bill, a transaction scan device is any commercial device or combination of devices used at a point of sale that can decipher in electronically readable format information encoded on the magnetic strip or bar code of a driver's license or identity card.

AFFIRMATIVE DEFENSE

Alcoholic liquor permittees, tobacco sellers and their agents or employees, may not be found guilty of selling to a minor if they prove that (1) a cardholder presented a driver's license or DMV-identity card in attempting to buy the liquor or tobacco, (2) their scan of the card indicated it was valid, and (3) the liquor or tobacco was sold in reasonable reliance on the identification and the validity of the scan.

In determining whether a permittee or seller has proven an affirmative defense, a court must consider that the use of a scan does not excuse a permittee or seller from exercising reasonable diligence to determine (1) if the customer is 21 years old or older in the case of alcohol or 18 years old or older in the case of tobacco, and (2) whether the description and picture on the license or card is that of the cardholder.

PURPOSE FOR WHICH SCAN MAY BE USED

The bill forbids permittees or their agents, or tobacco sellers, from using a transaction scan device for any purpose other than verifying a customer's age and identity. It prohibits them from recording any information from a driver's license or identity card other than (1) the name and date of birth of the person listed on the license or card, and (2) the expiration date and identification number of the license or card. The bill bars permittees and their agents, or tobacco sellers, from selling or distributing information derived from a transaction scan to any third party for such purposes as marketing, advertising, or promotional purposes, but allows them to release it if ordered to by a court.

BACKGROUND

Sale to Minors

Purchasers of alcoholic liquor, wine, or beer must be 21 years old. Purchasers of tobacco products must be 18 years old.

Permittees or their agents who sell alcohol to minors may be fined up to \$1,000 or sentenced to one year in prison, or both, for each offense. Any person who sells tobacco to a minor may be fined up to \$200 for the first offense, up to \$350 for a second offense within an 18-month period, and up to \$500 for each subsequent offense within 18 months.

COMMITTEE ACTION

General Law Committee

Joint Favorable Substitute

Yea 17 Nay 0